

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 05, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CINDY DICKSON, an individual,

Plaintiff,

v.

UNITED AIRLINES, INC., a
Delaware corporation; SKYWEST
AIRLINES, INC., a Utah
corporation; and DOE
DEFENDANTS 1-10,

Defendants.

NO: 4:20-CV-5014-RMP

PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for Protective Order, ECF No. 13. A district court may issue protective orders governing discovery upon a showing of good cause. Fed. R. Civ. P. 26(c). Before issuing a stipulated protective order, a district court judge should ensure that the protective order's restrictions do not infringe on the public's general right to inspect and copy judicial records and documents. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

1 Having reviewed the protective order and the remaining record, the Court
2 finds good cause to approve the stipulation and enter the agreed-upon protective
3 order. Accordingly, **IT IS HEREBY ORDERED** that the parties' Stipulated
4 Motion for Protective Order, **ECF No. 13**, is **GRANTED**. The Protective Order in
5 effect is set forth below.

6 **PROTECTIVE ORDER**

7 **1. PURPOSES AND LIMITATIONS**

8 Discovery in this action will involve production of confidential, proprietary,
9 or private information for which special protection may be warranted. Accordingly,
10 the parties have stipulated to and petitioned this Court to enter this Stipulated
11 Protective Order. The parties acknowledge that this agreement is consistent with
12 Rule 26(c) of the Federal Rules of Civil Procedure. It does not confer blanket
13 protection on all disclosures or responses to discovery. The protection it affords
14 from public disclosure and use extends only to the limited information or items that
15 are entitled to confidential treatment under the applicable legal principles, and it does
16 not presumptively entitle parties to file confidential information under seal.

17 **2. "CONFIDENTIAL" MATERIAL**

18 "Confidential" material shall include, but not necessarily be limited to, the
19 following documents and tangible things produced or otherwise exchanged: Any
20 information, material or document a person or entity in good faith believes
21 constitutes or reveals (1) a trade secret or other confidential research, development,

1 financial, proprietary, or commercial information, (2) a person's medical records and
2 billing records, (3) a person's employment records, education, tax records, and other
3 documents that include confidential and/or sensitive personal information, (4) any
4 information copied or extracted from confidential material; (5) all copies, excerpts,
5 summaries, or compilations of confidential material; and (6) any testimony,
6 conversations, or presentations by parties or their counsel that might reveal
7 confidential material. However, the protections conferred by this agreement do not
8 cover information that is in the public domain or becomes part of the public domain
9 through trial or otherwise.

10 **3. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

11 3.1 Basic Principles. A receiving party may use confidential material that
12 is disclosed or produced by another party or by a non-party in connection with this
13 case only for prosecuting, defending, or attempting to settle this litigation.
14 Confidential material may be disclosed only to the categories of persons and under
15 the conditions described in this agreement. Confidential material must be stored and
16 maintained by a receiving party at a location and in a secure manner that ensures that
17 access is limited to the persons authorized under this agreement.

18 3.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the Court or permitted in writing by the designating party, a
20 receiving party may disclose any confidential material only to:

- 21 (a) the receiving party's counsel of record in this action, as well as

employees and independent contractor attorneys and office staff of counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) the officers, directors, and employees (including in-house counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a particular document or material produced is for Attorney's Eyes Only and is so designated;

(c) experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

3.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove

1 the confidential designation, whether the document can be redacted, or whether a
2 motion to seal or stipulation and proposed order is warranted. *See Kamakana v. City*
3 *and Cty. of Honolulu*, 447 F.3d 1172 (2006).

4 **4. DESIGNATING PROTECTED MATERIAL**

5 4.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each party or non-party that designates information or items for protection under
7 this agreement must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. The designating party must designate for
9 protection only those parts of material, documents, items, or oral or written
10 communications that qualify, so that other portions of the material, documents
11 (including, but not limited to, answers to interrogatories), items, or communications
12 for which protection is not warranted are not swept unjustifiably within the ambit of
13 this agreement.

14 If it comes to a designating party's attention that the information or items that
15 it designated for protection do not qualify for protection, the designating party must
16 notify all other parties that it is withdrawing the designation.

17 4.2 Manner and Timing of Designations. Except as otherwise provided in
18 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
19 stipulated or ordered, disclosure or discovery material that qualifies for protection
20 under this agreement must be clearly so designated before or when the material is
21 disclosed or produced.

- 1 (a) Information in documentary form: (e.g., paper or electronic
2 documents and deposition exhibits, but excluding transcripts of
3 depositions or other pretrial or trial proceedings), the designating
4 party must affix the word “CONFIDENTIAL” to each page that
5 contains confidential material. If only a portion or portions of
6 the material on a page qualifies for protection, the producing
7 party also must clearly identify the protected portion(s) (e.g., by
8 making appropriate markings in the margins).
- 9 (b) Testimony given in deposition or in other pretrial or trial
10 proceedings: the parties must identify on the record, during the
11 deposition, hearing, or other proceeding, all protected testimony,
12 without prejudice to their right to so designate other testimony
13 after reviewing the transcript. Any party or non-party may,
14 within fifteen days after receiving a deposition transcript,
15 designate portions of the transcript, or exhibits thereto, as
16 confidential.
- 17 (c) Other tangible items: the producing party must affix in a
18 prominent place on the exterior of the container or containers in
19 which the information or item is stored the word
20 “CONFIDENTIAL.” If only a portion or portions of the
21 information or item warrant protection, the producing party, to
the extent practicable, shall identify the protected portion(s).

4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5.1 Timing of Challenges. Any party or non-party may challenge a

1 designation of confidentiality at any time. Unless a prompt challenge to a
2 designating party's confidentiality designation is necessary to avoid foreseeable,
3 substantial unfairness, unnecessary economic burdens, or a significant disruption or
4 delay of the litigation, a party does not waive its right to challenge a confidentiality
5 designation by electing not to mount a challenge promptly after the original
6 designation is disclosed.

7 5.2 Meet and Confer. The parties must make every attempt to resolve any
8 dispute regarding confidential designations without court involvement. Any motion
9 regarding confidential designations or for a protective order must include a
10 certification, in the motion or in a declaration or affidavit, that the movant has
11 engaged in a good faith meet and confer conference with other affected parties in an
12 effort to resolve the dispute without court action. The certification must list the date,
13 manner, and participants to the conference. A good faith effort to confer requires a
14 face-to-face meeting or a telephone conference.

15 5.3 Judicial Intervention. If the parties cannot resolve a challenge without
16 court intervention, the designating party may file and serve a motion to retain
17 confidentiality under Local Civil Rule 7. The burden of persuasion in any such
18 motion shall be on the designating party. Frivolous challenges, and those made for
19 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
20 on other parties) may expose the challenging party to sanctions. All parties shall
21 continue to maintain the material in question as confidential until the Court rules on

1 the challenge.

2 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
3 **PRODUCED IN OTHER LITIGATION**

4 If a party is served with a subpoena or a court order issued in other litigation
5 that compels disclosure of any information or items designated in this action as
6 “CONFIDENTIAL,” that party must:

- 7 (a) notify the designating party in writing and include a copy of the
8 subpoena or court order;
- 9 (b) notify in writing the party who caused the subpoena or order to issue in
10 the other litigation that some or all of the material covered by the
11 subpoena or order is subject to this agreement. Such notification shall
12 include a copy of this agreement; and
- 13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the designating party whose confidential material may be
15 affected.

16 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 confidential material to any person or in any circumstance not authorized under this
19 agreement, the receiving party must immediately: (a) notify in writing the
20 designating party of the unauthorized disclosures; (b) use its best efforts to retrieve
21 all unauthorized copies of the protected material; (c) inform the person or persons to
whom unauthorized disclosures were made of all the terms of this agreement; and
(d) request that such person or persons execute the “Acknowledgment and
Agreement to Be Bound” that is attached hereto as Exhibit A.

1 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a producing party gives notice to receiving parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the receiving parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order or agreement that provides for production
8 without prior privilege review. Parties shall confer on an appropriate non-waiver
9 order under Fed. R. Evid. 502.

10 **9. NON-TERMINATION AND RETURN OF DOCUMENTS**

11 Within 60 days after the termination of this action, including all appeals, each
12 receiving party must return all confidential material to the producing party, including
13 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
14 appropriate methods of destruction. Counsel for the parties may retain copies of
15 such documents until the expiration of all statutes of limitations for all claims that
16 might be brought upon the facts of this case or upon the litigation itself including
17 malpractice claims.

18 Notwithstanding this provision, counsel are entitled to retain one archival
19 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
20 correspondence, deposition and trial exhibits, expert reports, attorney work product,
21 and consultant and expert work product, even if such materials contain confidential

1 material.

2 The confidentiality obligations imposed by this agreement shall remain in
3 effect until a designating party agrees otherwise in writing or a Court orders
4 otherwise.

5 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
6 Order and provide copies to counsel.

7 **DATED** May 5, 2020.

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9 *s/ Rosanna Malouf Peterson*
10 ROSANNA MALOUF PETERSON
11 United States District Judge
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